

Border Measures and Mobility Consequences – COVID-19 Mandate Protests

Mobility Consequences for Southbound Travel

- Canadian citizens or permanent residents who are arrested and charged with a criminal offence **may face immigration admissibility consequences should they attempt entry into a foreign country**, and may be denied entry to the United States.
- **US Customs and Border Protection officers have direct access to the Canadian Police Information Centre (CPIC).** Criminal charge, conviction and wants/warrant data is shared between Canada and the United States via CPIC and the National Crime Information Centre. Municipal by-law or provincial/territorial offence data is not contained with CPIC and is not shared directly with the US in the normal course of operations, unless investigating agencies choose exceptionally to enter information about provincial/territorial charges into CPIC. When law enforcement agencies make entries into CPIC, they can add explanatory information (e.g. regarding participation in COVID-19 mandate protests) in the Remarks field.
- The outcome of judicial proceedings determines what information remains in CPIC. If the individual is found not guilty or the charge is dismissed, the information in CPIC is no longer visible to the US.
- **Wants/warrants data is available immediately to US CBP officers at primary inspection.** Additional queries can be conducted at primary to retrieve criminal history and charge data.
- Membership in trusted traveler and trader programs such as FAST and NEXUS could also be affected by criminal convictions.
- IRCC and CBSA can exchange information on citizens and PRs which is already in their possession with the US on a case-by-case basis, for the purpose of administering and enforcing immigration and citizenship law. However, IRCC's and CBSA's authority to collect information is limited to the collection of information with an operating purpose (i.e., when an individual seeks entry to Canada, or in the course of an immigration application). There is therefore **no likely scenario where IRCC or CBSA would be in the possession of information to proactively disclose to the US** in this regard.
- For foreign nationals in Canada who are criminally charged or found inadmissible to Canada, an info-alert is placed in the Global Case Management System. This information can be requested by the US according to existing information sharing treaties. There is no capacity for US CBP to launch automated, biographic-based queries against GCMS.
- All information collection and sharing, including collection of provincial and municipal information by the Government of Canada and subsequent sharing with the US, **must be done pursuant to lawful authority (Charter, Privacy Act and Avoiding Complicity Act).** IRCC's position is that there is no substantive risk of mistreatment by the US, as robust information sharing instruments are in place that make reference to meeting all obligations under the Convention Against Torture.
 - Solicitor-Client Priv.

Prohibiting Entry to Canada of Foreign Nationals

- Per S. 4(1) of the entry Order in Council, **unvaccinated foreign nationals, including U.S. citizens, are prohibited entry into Canada**, subject to limited exceptions. This is enforced via S. 41(d) of the Immigration and Refugee Protection Regulations, where Canada may direct back any foreign national to the United States who does not comply with an order made under the Quarantine Act.

- If there are reasonable ground to believe that a foreign national is **inadmissible for serious grounds**, legislative tools also allow a delegated officer at the Port of Entry to write an inadmissibility report and refer the individual to the Immigration and Refugee Board for an admissibility decision and issuance of a removal order. This may be on the basis of facts arising from events that may occur in the future and include:
 - engaging in acts of violence that would or might endanger the lives or safety of persons in Canada
 - being a danger to the security of Canada
 - engaging in or instigating the subversion by force of any government
 - engaging or being a member of an organization engaged in organized criminality.
- For vaccinated individuals who are not inadmissible under the Immigration and Refugee Protection Act (IRPA), **the authority to use negative discretion under s. 22.1 of IRPA to prohibit entry of an individual to Canada rests with the Minister of IRCC**. This authority cannot be delegated and must be exercised by the Minister. It cannot prohibit a class of individuals from becoming temporary residents. It must be exercised for named individuals, following a full consideration of their case and in accordance with the principles of procedural fairness. Negative discretion should only be used if a foreign national is not otherwise inadmissible. The decision has to be rendered before an individual appears at a Port of Entry in order for border service officers to deny entry to the named individual.
 - Negative discretion has been used on only two previous occasions (most recently in 2015). Direction must come via a memo would be prepared for the Minister's signature. A thorough analysis of the individual and their activities would be required **Solicitor-Client Priv.** Because it is not class-based but rather based on named individuals, each individual would need to be assessed separately. It is a reactive mechanism that would require time to operationalize.
- It should be noted that high-volume, automated immigration information sharing is not engaged for US citizens because, in line with Beyond the Border principles, **Canada and the US do not screen nationals of their countries prior to arrival at the border**, to permit entry. However, CBSA and IRCC can exchange information on citizens on a case-by-case basis.

Criminal Charges Against Foreign Nationals

- Regarding criminal charges against foreign nationals, there are provisions under the Immigration and Refugee Protection Act that would allow for **findings of inadmissibility based on criminal convictions or based on committing an offence** (S. 36(1) and (2)).
- **Where there is no conviction, it is still possible to find a person inadmissible for "committing" an offence** – it is not necessary that there be charges pending; however there would need to be sufficient evidence to demonstrate that on a balance of probability the person has committed an act that is an offence in the US and that, if committed in Canada, would be an indictable offence under an Act of Parliament. An offence that is punishable summarily or by indictment is considered to be "indictable" for purposes of s. 36 of IRPA.
- This would not cover minor offences designated as a contravention under the Contraventions Act nor offences under the Ontario Highway Traffic Act. **It would, however, cover Criminal Code offences such as mischief causing bodily harm or damage to property, driving under the influence, or dangerous driving.**
- If a foreign national does not require a visa or eTA to come to Canada and is found inadmissible for "committing" an offence at the border in Canada under s. 36(1)(c) or s. 36(2)(c) of IRPA, the

inadmissibility report prepared by CBSA would need to be referred to the IRB which has the authority to issue a removal order (s. 44(2) of IRPA and s. 128(1) of IRPR). **If the inadmissibility is based on a conviction, however, the CBSA officer can issue the removal order at the port of entry.**